

Order

Entered: March 11, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2002-49
2002-50
2003-09

Proposed Amendment of Canon 7 of the Michigan Code of Judicial Conduct

On order of the Court, this is to advise that the Court is considering amendment of Canon 7 of the Michigan Code of Judicial Conduct. Before determining whether this proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below by redlining for new text and overstriking for text that would be deleted.]

Canon 7 A Judge or a Candidate for Judicial Office Should Refrain from
Political Activity Inappropriate to Judicial Office

A. [Unchanged.]

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office:

(a) - (c) [Unchanged.]

(d) should not knowingly, or with reckless disregard, use or participate in the use of any form of public communication that is false. All written forms of communication promoting the election of the judicial candidate, including, but not limited to, advertisements, lawn signs, billboards, and brochures, shall contain the first name of the candidate or such other name by which the candidate is commonly known. The first or other name of the judicial candidate shall be at least one-third the size of the last name of the candidate and, by itself or with the candidate's middle name or initial, shall immediately precede the last name.

(2) These provisions govern a candidate, including an incumbent judge, for a judicial office:

- (a) A candidate judge should not personally solicit or accept campaign funds, or solicit publicly stated support by improper use of the judicial office in violation of B(1)(c). A candidate judge may send a thank-you note to a contributor.
- (b) A candidate judge may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.
- (c) [Unchanged.]
- (d) A candidate's committee may not accept funds from any committee that was established in connection with the candidate's attempt to secure any other judicial or nonjudicial office. The committee may solicit funds for the campaign no earlier than February 15 of the year of the election, and may not solicit or accept funds after the date of the general election.

(e) - (f) [Unchanged.]

(3) [Unchanged.]

(C) - (D) [Unchanged.]

Staff Comment: The proposed amendment of Canon 7B(1)(d) would require that a candidate for judicial office use a first name or such other name by which the candidate is commonly known, as well as a last name, in written communications promoting the candidacy. The rule change would help eliminate confusion among voters as to the candidate's identity, particularly when candidates with the same surname are running for judicial office at the same time. (ADM File No. 2002-49.)

The proposed amendment of Canon 7B(2)(a) and (b) would clarify that Canon 7B applies to all candidates for judicial office, not just incumbent judges. (ADM File No. 2003-09).

The proposed amendment of Canon 7B(2)(d) would preclude a judicial campaign committee from accepting funds from another committee that was set up for that candidate in connection with an attempt to secure any other judicial or nonjudicial office. Although Canon 7B(2) prohibits judicial campaign committees from raising funds before February 15 of an election year and from soliciting more than \$100 per individual lawyer, these provisions potentially could be evaded under current 7B(2)(d). For example, the rule does not expressly preclude the transfer to a judicial campaign committee of funds solicited before February 15 of an election year for a nonjudicial campaign. Nor does it expressly prohibit the transfer of a contribution solicited from an individual lawyer for a nonjudicial campaign to a subsequently established judicial committee for that same candidate. In that situation, the lawyer might have contributed \$500 to the nonjudicial campaign, more than the judicial campaign committee could solicit, and the judicial campaign committee then could solicit a new direct \$100 contribution from the

lawyer. The proposed amendment would eliminate these flaws in the current text, as well as potential violations of the contribution limits set by the Michigan Campaign Finance Act, MCL 169.201 *et seq.* (ADM File No. 2002-50.)

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-49, 2002-50, or 2003-09. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

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March 11, 2003

Corbin R. Davis

Clerk